

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>
(240) 777-6600

**Case No. A-6625
PETITION OF RULON MAYER AND HEATHER CHEN-MAYER**

OPINION OF THE BOARD
(Hearing Held: July 24, 2019)
(Effective Date of Opinion: July 31, 2019)

Case No. A-6625 is an application by Rulon Mayer and Heather Chen-Mayer (the "Petitioners") for two variances. The existing home requires a variance of five (5) feet as it is within twenty-five (25) feet of the front lot line. The required setback is thirty (30) feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance. In addition, the proposed enclosure of an existing second story porch also requires a variance of five (5) feet because it, too, is within twenty-five (25) feet of the front lot line. The required setback is thirty (30) feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, July 24, 2019. Petitioner Rulon Mayer appeared at the hearing in support of the variance application. He was accompanied by his contractor, Gerardo F. Perez of Great Day Improvements.

Decision of the Board: Variances **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 19, Block 56, Garrett Park Subdivision, located at 10702 Keswick Street, Garrett Park, MD, 20896, in the R-90 Zone. It is a rectangular lot, 10,200 square feet in area, with a width of 75.28 feet and a depth of 135.5 feet. See Exhibits 1, 3, and 4. Per SDAT, the Petitioners purchased this property in 1999.

2. The Statement of Justification ("Statement") explains that the Petitioners are seeking to "construct a 8' x 50' enclosure on an existing [second story] deck," noting that "[t]he proposed sunroom will consist of tempered glass windows and screens," and that "[t]he enclosure will be covered with an existing roof." It states that the existing house, which was built in 1947, is set back 25 feet from the front property line, five (5) feet shy of the thirty (30) feet that are required. The Petitioners are seeking variance relief for their existing house and for the enclosure of their existing second story porch, which is also

set back 25 feet from the front property line. The Statement states that this condition “prevent[s] practical and reasonable use of the yard.” See Exhibit 3.

3. The Statement at Exhibit 3 addresses the required findings for the grant of a variance as follows:

- The subject property was acquired in good faith.
- The condition and configuration of the subject property is not shared by others in the vicinity.
- The existing structure was built at a 25’ setback not the current requirement of 30’ from the front property line, preventing practical and reasonable use of the yard.
- The proposed enclosure will be in character with the existing structure on the lot and will in no way adversely affect the integrity of the subject property.
- The proposed enclosure will in no way affect the existing vegetation or trees of the property.
- The proposed enclosure will not adversely impact the use or enjoyment of any neighboring properties in regard to noise, light, air, erosion and/or stormwater run-off.

4. The record contains a letter from Andrea Fox, Town Manager for the Town of Garrett Park, indicating that the Town has granted the Petitioners the variance needed for their proposed construction, and has issued a Garrett Park Building Permit to allow the Petitioners to enclose the existing second floor porch and remove the existing ballustrade. See Exhibit 7.

5. At the hearing, Gerardo Perez testified that because the house was constructed 25 feet from the front lot line, the front yard of the subject property is shallow. Mr. Perez testified that the Petitioners received a variance from the Town of Garrett Park, and that it was not until afterwards, when they went to the County, that they were told that the existing house was nonconforming. He stated that they are seeking variances for the existing house and for the proposed porch enclosure. He testified that the proposed construction will not expand the footprint of the existing structure.

6. Petitioner Rulon Mayer testified that he has lived at the subject property for more than 20 years. He testified that he is seeking to enclose the existing second story porch with glass. He indicated that there may be a need for additional support structures if the proposed construction is allowed. Mr. Mayer testified that at the variance hearing before the Town of Garrett Park, there was support for the proposed variance from his neighbors on both sides and from his neighbor across the street.

FINDINGS OF THE BOARD

Based on the binding testimony of the Petitioner and his contractor, and on the evidence of record, the Board finds that the requested variances can be granted. The

requested variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement and the testimony of Mr. Perez, that the proposed development uses an existing structure (house with second story front porch) which was built in 1947 at a distance of 25 feet from the front lot line. The required setback is 30 feet. See Exhibit 3. The Board further finds, based on the building permit denial and accompanying email from Mark Beall, Zoning Manager, Department of Permitting Services, that the Department of Permitting Services has concluded that the existing structure is nonconforming, and that by definition, that indicates that the structure is legally nonconforming. See Exhibit 6. Thus the Board finds that the Petitioners' existing house and second story porch are nonconforming. Accordingly, the Board finds that the application satisfies Section 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the existing house, with its second story porch, was built in 1947, prior to the Petitioners' purchase of this property in 1999. Thus the Board finds that the Petitioners took no actions to create this nonconforming structure, and accordingly finds that the special circumstances or conditions peculiar to this property are not the result of any actions by the Petitioners.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

As noted above, the existing house and second story porch are nonconforming, and encroach on the required setback from the front lot line. The Board finds that the Petitioner cannot enclose this existing, nonconforming second story porch without the grant of the requested variance, causing the Petitioner a practical difficulty. The Board notes that the proposed second story enclosure will not extend any further into the setback than the existing house already does, will be covered by the existing roof, and will not increase the footprint of the existing structure. The Board further notes that the variance for the existing house is sought solely to allow the house to remain where it has been since it was built, and to allow the proposed construction on the second story. Thus the Board finds that the requested five (5) foot variances are the minimum needed to allow the existing house to remain in place and to allow the proposed construction, and to therefore to overcome the practical difficulty that full compliance with the Zoning Ordinance would impose.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that granting the requested variances will not expand the footprint of the existing house and will continue the residential use of the property. Thus the Board finds that the grant of the requested variances will not substantially impair the intent and integrity of the North Bethesda/Garrett Park Master Plan (1992), which seeks, with respect to Garrett Park, to "[p]reserve the unique park-like setting of the 19th century garden suburb and maintain the prevailing pattern of houses and open spaces by retaining the maximum amount of green area around new or expanded houses."

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the record contains no opposition to the proposed construction and that the proposal has been approved by the Town of Garrett Park. See Exhibit 7. The Board further finds, based on the testimony of Mr. Mayer, that his neighbors on both sides and across the street supported his variance request before the Town of Garrett Park. In addition, the Board finds, per the Statement, that "[t]he proposed enclosure will in no way affect the existing vegetation or trees of the property," "will not adversely impact the use or enjoyment of any neighboring properties in regard to noise, light, air, erosion and/or stormwater run-off," and "will be in character with the existing structure on the lot." See Exhibit 3. Thus the Board finds that granting the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances, for the existing structure and to allow the proposed enclosure of an existing second story porch, are **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 5(a) and (b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, with Stanley B. Boyd, Vice Chair, Katherine Freeman, and Jon W. Cook in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 31st day of July, 2019.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.